

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SHARON BOBBITT, Individually and ) No. 04-12263-PBS  
On Behalf of All Others Similarly )  
Situating, )

Plaintiff, )

vs. )

ANDREW J. FILIPOWSKI, et al., )

Defendants. )

---

JAMES F. HOWARD, Individually and ) No. 06-11072-PBS  
On Behalf of All Others Similarly )  
Situating, )

Plaintiff, )

vs. )

ANDREW J. FILIPOWSKI, et al., )

Defendants. )

---

DECLARATION OF CAROLE K. SYLVESTER RE A) MAILING  
OF THE NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF  
CLASS ACTION, MOTION FOR ATTORNEY FEES AND  
SETTLEMENT FAIRNESS HEARING AND THE PROOF OF CLAIM  
AND RELEASE FORM AND B) PUBLICATION OF THE  
SUMMARY NOTICE

I, Carole K. Sylvester, declare:

**THE NOTICE AND PROOF OF CLAIM AND RELEASE**

1. I submit this declaration in order to provide the Court and the parties to the above-captioned litigation with information regarding the mailing of the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorney Fees and Settlement Fairness Hearing (the "Notice"), and the Proof of Claim and Release form (the "Proof of Claim") and publication of the Summary Notice. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I am employed by Gilardi & Co. LLC, located at 3301 Kerner Blvd., San Rafael, California. My firm was retained as the Claims Administrator in this matter. I oversaw the notice services Gilardi provided in accordance with the Amended Order Preliminarily Approving Settlement and Providing for Notice (the "Order") that was entered by the Court in this matter. True and correct copies of the Notice and the Proof of Claim are attached hereto as Exhibits A and B, respectively. The Notice and Proof of Claim were in the form approved by the Court.

**MAILING OF THE NOTICE**

3. On May 1, 2008, Gilardi sent a cover letter with copies of the Notice and Proof of Claim (collectively, the "Claim Package") to a list of 94 entities (most of which are major brokerage houses) that commonly hold securities in "street name" as nominees for the benefit of their customers who are the beneficial purchasers of the securities. The brokers were chosen from a proprietary database maintained by our firm and represent a significant majority of the claims filers in each securities case. The letter advised the brokers and nominees of the pending action and requested their cooperation in forwarding the Claim Package to the

beneficial purchaser. A copy of the letter dated May 1, 2008 sent to nominees and brokerage houses in this case, is attached hereto as Exhibit C.

4. In accordance with the Order, Gilardi obtained from divine, Inc.'s ("divine") transfer agent, a list of names and addresses of persons and entities who purchased or otherwise acquired divine securities between September 17, 2001 and February 14, 2003 (the "Class Period") and holders of shares of the following companies who acquired their shares in connection with divine's acquisition of: eShare Communications, Inc., Data Return, Inc., Delan Technology and Viant Corporation. On or before May 2, 2008, I caused address labels prepared from that list to be affixed to envelopes containing copies of the Claim Package. I thereafter caused the envelopes to be posted for first-class mail and delivered on or before May 2, 2008 to the United States Post Office located in Santa Rosa, California. The total number of Claim Packages mailed on or before May 2, 2008 to those potential members of the class was 4,320.

5. Additionally, our firm has e-mailed Claim Packages on May 6, 2008 to 772 registered electronic filers who are qualified to submit electronic claims. As background, these filers are primarily institutions and third-party filers and typically file numerous claims on behalf of beneficial owners for whom they act as trustee or fiduciary.

6. On May 13, 2008, we mailed 2,951 cover letters and Claim Packages to institutions included on the Securities & Exchange Commission's ("SEC") list of active brokers and dealers.

7. Our firm has acted as a repository for shareholder inquiries and communications received in this action. In this regard, we have forwarded the Claim Package on request to nominees who held divine securities for the beneficial interest of other persons and entities. We have also forwarded the Claim Package

directly to beneficial owners upon receipt of the names and addresses from such beneficial owners.

8. In response to the 94 broker letters that were sent, we received 38 responses that included computer files listing a total of 17,629 names and addresses of potential class members. We also received 21 responses that enclosed mailing labels with names and addresses for an additional mailing to 2,366 potential class members. As a result we mailed an additional 19,995 Claim Packages to potential class members. Twelve institutions requested that we send them a total of 1,073 additional Claim Packages, which they indicated that they would mail directly to their clients who might be class members. As a result of the broker letter mailing, an additional 21,068 potential class members were notified.

9. As of the date of this declaration, we have mailed a total of 29,205 Claim Packages to potential class members. Of these: 4,320 were mailed to the names and addresses from the transfer agent list, 772 were e-mailed to registered electronic filers, 94 were mailed with our broker letter to brokers and nominees, 2,366 were mailed to potential class members from labels provided by brokers, 1,073 were sent to nominees in response to the bulk requests, 17,629 were mailed to the computer lists provided by brokers and 2,951 were mailed to the SEC list of active broker-dealers.

10. Gilardi also posted copies of the Order, Notice, and the Proof of Claim form on our website ([www.gilardi.com](http://www.gilardi.com)) on or about May 2, 2008.

#### **PUBLICATION OF THE SUMMARY NOTICE**

11. In accordance with the Order, Gilardi caused the Summary Notice to be published in *Investor's Business Daily* on May 6, 2008, as shown in the Affidavit of Publication attached hereto as Exhibit D.

## **REPORT ON REQUESTS FOR EXCLUSION RECEIVED**

12. The answer to question 13 of the Notice informed class members that to exclude themselves from the Class written requests for exclusion must be mailed, postmarked no later than June 2, 2008, addressed to divine Securities Litigation, Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 8040, San Rafael, CA 94912. My firm has monitored all mail delivered to that Post Office Box. As of the date of this declaration, we have received three requests for exclusion from the class. Central Trust & Investment Company (EXCL00001) states that they had no customers that ever held divine stock. Kathryn J. Koclanis (EXCL00002) states that she purchased and sold 5,000 shares in the Class Period, but does not say whether she incurred a loss. James G. Blanchard (EXCL00003) states that he has no shares of divine securities. Copies of the exclusions are attached hereto as Exhibit E.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 13th day of June 2008, at San Rafael, California.

  
\_\_\_\_\_  
CAROLE K. SYLVESTER

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 17, 2008.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)  
E-mail: [EllenG@csgrr.com](mailto:EllenG@csgrr.com)

## Mailing Information for a Case 1:04-cv-12263-PBS

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Bruce S. Barnett**  
bruce.barnett@dlapiper.com,janine.medina@dlapiper.com
- **Thomas David Brooks**  
tdbrooks@sperling-law.com
- **Joel G. Chefitz**  
jchefitz@mwe.com
- **Christopher J. Panos, Trustee of the Sabine, Inc. Liquidating Trust**  
jkoltun@craigmacauley.com
- **Joseph Edward Collins**  
joseph.collins@dlapiper.com
- **Mayeti Gametchu**  
mgametchu@wolfblock.com,mahall@wolfblock.com
- **Ellen Anne Gusikoff Stewart**  
elleng@csgrr.com,elleng@csgrr.com
- **James E. Hanlon , Jr**  
hanlonj@howrey.com
- **Howard T. Longman**  
tsvi@aol.com
- **Kevin J. O'Connor**  
koconnor@wolfblock.com,mahall@wolfblock.com
- **David Pastor**  
dpastor@gilmanpastor.com,rkaloutas@gilmanpastor.com,sdurgin@gilmanpastor.com
- **Stephanie R. Pratt**  
spratt@segalroitman.com,jstein@segalroitman.com
- **David A. Rosenfeld**  
drosenfeld@csgrr.com
- **Samuel H. Rudman**  
SRudman@csgrr.com
- **Anne R. Sills**

asills@segalroitman.com,sgillin@segalroitman.com,tsullivan@segalroitman.com

- **Bruce S. Sperling**  
bss@sperling-law.com
- **Mary T. Sullivan**  
msullivan@segalroitman.com,jstein@segalroitman.com,sgillin@segalroitman.com
- **Marc A. Topaz**  
ecf\_filings@sbtclaw.com
- **Marc M. Umeda**  
notice@ruflaw.com,zimmer@ruflaw.com,umeda@ruflaw.com

## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

### **Guri Ademi**

Ademi & O'Reilly  
3620 East Layton  
Cudahy, WI 53110

### **Shpetim Ademi**

Ademi & O'Reilly  
3620 East Layton  
Cudahy, WI 53110

### **Celiza Patricia Braganca**

Sperling & Slater  
55 West Monroe Street  
Suite 3200  
Chicago, IL 60603

### **Michael A. Duffy**

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601

### **Eugene J. Frett**

Sperling & Slater  
55 West Monroe Street  
Suite 3200  
Chicago, IL 60603

### **John A.D. Gilmore**

DLA Piper Rudnick Gray Cary US LLP  
One International Place, 21st Floor  
100 Oliver Street  
Boston, MA 02110-2600

### **John F. Hartmann**

Kirkland & Ellis LLP  
200 East Randolph Drive



Chicago, IL 60601

**Bruce C. Howard**

Law Offices of Robert D. Allison  
122 South Michigan Avenue 1850  
Chicago, IL 60603

**Douglas Warren Hyman**

Piper Rudnick LLP  
203 North LaSalle Street  
#1900  
Chicago, IL 60601-1293

**Samuel Bayard Isaacson**

Piper Rudnick LLP  
203 North LaSalle Street  
#1900  
Chicago, IL 60601-1293

**Daniel J. Lyne**

Hanify & King  
Professional Corporation  
One Beacon Street  
Boston, MA 02108-3107

**Marvin Allen Miller**

Miller Faucher and Cafferty, LLP  
30 North LaSalle Street  
Suite 3200  
Chicago, IL 60602

**Christopher B. Sanchez**

Miller Faucher and Cafferty, LLP  
30 North LaSalle Street  
Suite 3200  
Chicago, IL 60602

**Patrick J. Sherlock**

Beigel, Schy, Lasky, Cohen, Rifkind & Hennessey  
11 South LaSalle  
Suite 1600  
Chicago, IL 60606

**Jennifer Winter Sprengel**

Miller Faucher and Cafferty, LLP  
30 North LaSalle Street  
Suite 3200  
Chicago, IL 60602

**Lawrence A. Wojcik**

Piper Rudnick Gray Cary US LLP  
203 N. LaSalle  
Suite 1800  
Chicago, IL 60601-1293